2:19 P.M.

## HOUSE BILL NO. 695

Originated in House \_\_\_\_\_\_

Clerk

## HOUSE BILL NO. 695

AN ACT TO AMEND SECTION 57-73-21, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF THE REPEALER ON THE PROVISION OF LAW THAT AUTHORIZES AN INCOME TAX CREDIT FOR ANY COMPANY THAT TRANSFERS OR RELOCATES ITS NATIONAL OR REGIONAL HEADQUARTERS TO THE STATE OF MISSISSIPPI FROM OUTSIDE THE STATE OF MISSISSIPPI; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 57-73-21, Mississippi Code of 1972, is amended as follows:

[In cases involving business enterprises that received or applied for the job tax credit authorized by this section prior to January 1, 2005, this section shall read as follows:]

57-73-21. (1) Annually by December 31, using the most current data available from the University Research Center,
Mississippi Department of Employment Security and the United
States Department of Commerce, the State Tax Commission shall rank and designate the state's counties as provided in this section.

The twenty-eight (28) counties in this state having a combination of the highest unemployment rate and lowest per capita income for

the most recent thirty-six-month period, with equal weight being given to each category, are designated Tier Three areas. twenty-seven (27) counties in the state with a combination of the next highest unemployment rate and next lowest per capita income for the most recent thirty-six-month period, with equal weight being given to each category, are designated Tier Two areas. twenty-seven (27) counties in the state with a combination of the lowest unemployment rate and the highest per capita income for the most recent thirty-six-month period, with equal weight being given to each category, are designated Tier One areas. Counties designated by the Tax Commission qualify for the appropriate tax credit for jobs as provided in subsections (2), (3) and (4) of this section. The designation by the Tax Commission is effective for the tax years of permanent business enterprises which begin after the date of designation. For companies which plan an expansion in their labor forces, the Tax Commission shall prescribe certification procedures to ensure that the companies can claim credits in future years without regard to whether or not a particular county is removed from the list of Tier Three or Tier Two areas.

(2) Permanent business enterprises primarily engaged in manufacturing, processing, warehousing, distribution, wholesaling and research and development, or permanent business enterprises designated by rule and regulation of the Mississippi Development Authority as air transportation and maintenance facilities, final

destination or resort hotels having a minimum of one hundred fifty (150) guest rooms, recreational facilities that impact tourism, movie industry studios, telecommunications enterprises, data or information processing enterprises or computer software development enterprises or any technology intensive facility or enterprise, in counties designated by the Tax Commission as Tier Three areas are allowed a job tax credit for taxes imposed by Section 27-7-5 equal to Two Thousand Dollars (\$2,000.00) annually for each net new full-time employee job for five (5) years beginning with years two (2) through six (6) after the creation of the job; however, if the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the permanent business enterprise is unable to maintain the required number of jobs, the Chairman of the State Tax Commission may extend this time period for not more two (2) years. The number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to the Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those permanent businesses that increase employment by ten (10) or more in a Tier Three area are eligible for the credit. Credit is not allowed during any of the five (5) years if the net employment increase falls below ten (10). Tax Commission shall adjust the credit allowed each year for the

net new employment fluctuations above the minimum level of ten (10).

Permanent business enterprises primarily engaged in manufacturing, processing, warehousing, distribution, wholesaling and research and development, or permanent business enterprises designated by rule and regulation of the Mississippi Development Authority as air transportation and maintenance facilities, final destination or resort hotels having a minimum of one hundred fifty (150) quest rooms, recreational facilities that impact tourism, movie industry studios, telecommunications enterprises, data or information processing enterprises or computer software development enterprises or any technology intensive facility or enterprise, in counties that have been designated by the Tax Commission as Tier Two areas are allowed a job tax credit for taxes imposed by Section 27-7-5 equal to One Thousand Dollars (\$1,000.00) annually for each net new full-time employee job for five (5) years beginning with years two (2) through six (6) after the creation of the job; however, if the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the permanent business enterprise is unable to maintain the required number of jobs, the Chairman of the State Tax Commission may extend this time period for not more two (2) years. The number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to

Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those permanent businesses that increase employment by fifteen (15) or more in Tier Two areas are eligible for the credit. The credit is not allowed during any of the five (5) years if the net employment increase falls below fifteen (15). The Tax Commission shall adjust the credit allowed each year for the net new employment fluctuations above the minimum level of fifteen (15).

Permanent business enterprises primarily engaged in manufacturing, processing, warehousing, distribution, wholesaling and research and development, or permanent business enterprises designated by rule and regulation of the Mississippi Development Authority as air transportation and maintenance facilities, final destination or resort hotels having a minimum of one hundred fifty (150) quest rooms, recreational facilities that impact tourism, movie industry studios, telecommunications enterprises, data or information processing enterprises or computer software development enterprises or any technology intensive facility or enterprise, in counties designated by the Tax Commission as Tier One areas are allowed a job tax credit for taxes imposed by Section 27-7-5 equal to Five Hundred Dollars (\$500.00) annually for each net new full-time employee job for five (5) years beginning with years two (2) through six (6) after the creation of the job; however, if the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the permanent business enterprise is unable to maintain the required number of jobs, the Chairman of the State Tax Commission may extend this time period for not more than two (2) years. The number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those permanent businesses that increase employment by twenty (20) or more in Tier One areas are eligible for the credit. The credit is not allowed during any of the five (5) years if the net employment increase falls below twenty (20). The Tax Commission shall adjust the credit allowed each year for the net new employment fluctuations above the minimum level of twenty (20).

(5) In addition to the credits authorized in subsections (2), (3) and (4), an additional Five Hundred Dollars (\$500.00) credit for each net new full-time employee or an additional One Thousand Dollars (\$1,000.00) credit for each net new full-time employee who is paid a salary, excluding benefits which are not subject to Mississippi income taxation, of at least one hundred twenty-five percent (125%) of the average annual wage of the state or an additional Two Thousand Dollars (\$2,000.00) credit for each net new full-time employee who is paid a salary, excluding benefits which are not subject to Mississippi income taxation, of at least two hundred percent (200%) of the average annual wage of

the state, shall be allowed for any company establishing or transferring its national or regional headquarters from within or outside the State of Mississippi. A minimum of thirty-five (35) jobs must be created to qualify for the additional credit. The State Tax Commission shall establish criteria and prescribe procedures to determine if a company qualifies as a national or regional headquarters for purposes of receiving the credit awarded in this subsection. As used in this subsection, the average annual wage of the state is the most recently published average annual wage as determined by the Mississippi Department of Employment Security.

- (6) In addition to the credits authorized in subsections
  (2), (3), (4) and (5), any job requiring research and development skills (chemist, engineer, etc.) shall qualify for an additional One Thousand Dollars (\$1,000.00) credit for each net new full-time employee.
- through (6), any commercial or industrial property owner which remediates contaminated property in accordance with Sections 49-35-1 through 49-35-25, is allowed a job tax credit for taxes imposed by Section 27-7-5 equal to the amounts provided in subsection (2), (3) or (4) for each net new full-time employee job for five (5) years beginning with years two (2) through six (6) after the creation of the job. The number of new full-time jobs must be determined by comparing the monthly average number of

full-time employees subject to Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. This subsection shall be administered in the same manner as subsections (2), (3) and (4), except the landowner shall not be required to increase employment by the levels provided in subsections (2), (3) and (4) to be eligible for the tax credit.

- (8) Tax credits for five (5) years for the taxes imposed by Section 27-7-5 shall be awarded for additional net new full-time jobs created by business enterprises qualified under subsections (2), (3), (4), (5), (6) and (7) of this section. Except as otherwise provided, the Tax Commission shall adjust the credit allowed in the event of employment fluctuations during the additional five (5) years of credit.
- (9) (a) The sale, merger, acquisition, reorganization, bankruptcy or relocation from one (1) county to another county within the state of any business enterprise may not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The Tax Commission shall determine whether or not qualifying net increases or decreases have occurred or proper transfers of credit have been made and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.
- (b) This subsection shall not apply in cases in which a business enterprise has ceased operation, laid off all its

employees and is subsequently acquired by another unrelated business entity that continues operation of the enterprise in the same or a similar type of business. In such a case the succeeding business entity shall be eligible for the credit authorized by this section unless the cessation of operation of the business enterprise was for the purpose of obtaining new eligibility for the credit.

- in any taxable year may be carried forward for five (5) years from the close of the tax year in which the qualified jobs were established but the credit established by this section taken in any one (1) tax year must be limited to an amount not greater than fifty percent (50%) of the taxpayer's state income tax liability which is attributable to income derived from operations in the state for that year. If the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the business enterprise is unable to use the existing carryforward, the Chairman of the State Tax Commission may extend the period that the credit may be carried forward for a period of time not to exceed two (2) years.
- (11) No business enterprise for the transportation, handling, storage, processing or disposal of hazardous waste is eligible to receive the tax credits provided in this section.

- (12) The credits allowed under this section shall not be used by any business enterprise or corporation other than the business enterprise actually qualifying for the credits.
- in addition to any tax credits described in Sections 57-51-13(b), 57-53-1(1)(a) and 57-54-9(b) and granted pursuant to official action by the Mississippi Development Authority prior to July 1, 1989, to any business enterprise determined prior to July 1, 1989, by the Mississippi Development Authority to be a qualified business as defined in Section 57-51-5(f) or Section 57-54-5(d) or a qualified company as described in Section 57-53-1, as the case may be; however, from and after July 1, 1989, tax credits shall be allowed only under either this section or Sections 57-51-13(b), 57-53-1(1)(a) and Section 57-54-9(b) for each net new full-time employee.
- enterprises" means entities engaged in the creation, display, management, storage, processing, transmission or distribution for compensation of images, text, voice, video or data by wire or by wireless means, or entities engaged in the construction, design, development, manufacture, maintenance or distribution for compensation of devices, products, software or structures used in the above activities. Companies organized to do business as commercial broadcast radio stations, television stations or news organizations primarily serving in-state markets shall not be

included within the definition of the term "telecommunications enterprises."

[In cases involving business enterprises that apply for the job tax credit authorized by this section from and after January 1, 2005, this section shall read as follows:]

57-73-21. (1) Annually by December 31, using the most current data available from the University Research Center, Mississippi Department of Employment Security and the United States Department of Commerce, the Department of Revenue shall rank and designate the state's counties as provided in this The twenty-eight (28) counties in this state having a combination of the highest unemployment rate and lowest per capita income for the most recent thirty-six-month period, with equal weight being given to each category, are designated Tier Three The twenty-seven (27) counties in the state with a areas. combination of the next highest unemployment rate and next lowest per capita income for the most recent thirty-six-month period, with equal weight being given to each category, are designated Tier Two areas. The twenty-seven (27) counties in the state with a combination of the lowest unemployment rate and the highest per capita income for the most recent thirty-six-month period, with equal weight being given to each category, are designated Tier One Counties designated by the Department of Revenue qualify for the appropriate tax credit for jobs as provided in this The designation by the Department of Revenue is section.

effective for the tax years of permanent business enterprises which begin after the date of designation. For companies which plan an expansion in their labor forces, the Department of Revenue shall prescribe certification procedures to ensure that the companies can claim credits in future years without regard to whether or not a particular county is removed from the list of Tier Three or Tier Two areas.

(2) Permanent business enterprises in counties designated by the Department of Revenue as Tier Three areas are allowed a job tax credit for taxes imposed by Section 27-7-5 equal to ten percent (10%) of the payroll of the enterprise for net new full-time employee jobs for five (5) years beginning with years two (2) through six (6) after the creation of the minimum number of jobs required by this subsection; however, if the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the permanent business enterprise is unable to maintain the required number of jobs, the Commissioner of Revenue may extend this time period for not more than two (2) years. number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to the Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those permanent business enterprises that increase employment by ten (10) or more in a Tier Three area are eligible for the credit.

Credit is not allowed during any of the five (5) years if the net employment increase falls below ten (10). The Department of Revenue shall adjust the credit allowed each year for the net new employment fluctuations above the minimum level of ten (10).

Permanent business enterprises in counties that have been designated by the Department of Revenue as Tier Two areas are allowed a job tax credit for taxes imposed by Section 27-7-5 equal to five percent (5%) of the payroll of the enterprise for net new full-time employee jobs for five (5) years beginning with years two (2) through six (6) after the creation of the minimum number of jobs required by this subsection; however, if the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the permanent business enterprise is unable to maintain the required number of jobs, the Commissioner of Revenue may extend this time period for not more than two (2) years. number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those permanent business enterprises that increase employment by fifteen (15) or more in Tier Two areas are eligible for the credit. credit is not allowed during any of the five (5) years if the net employment increase falls below fifteen (15). The Department of

Revenue shall adjust the credit allowed each year for the net new employment fluctuations above the minimum level of fifteen (15).

Permanent business enterprises in counties designated by the Department of Revenue as Tier One areas are allowed a job tax credit for taxes imposed by Section 27-7-5 equal to two and one-half percent (2.5%) of the payroll of the enterprise for net new full-time employee jobs for five (5) years beginning with years two (2) through six (6) after the creation of the minimum number of jobs required by this subsection; however, if the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the permanent business enterprise is unable to maintain the required number of jobs, the Commissioner of Revenue may extend this time period for not more than two (2) The number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those permanent business enterprises that increase employment by twenty (20) or more in Tier One areas are eligible for the credit. The credit is not allowed during any of the five (5) years if the net employment increase falls below twenty (20). The Department of Revenue shall adjust the credit allowed each year for the net new employment fluctuations above the minimum level of twenty (20).

- In addition to the other credits authorized in this (5) (a)section, an additional Five Hundred Dollars (\$500.00) credit for each net new full-time employee or an additional One Thousand Dollars (\$1,000.00) credit for each net new full-time employee who is paid a salary, excluding benefits which are not subject to Mississippi income taxation, of at least one hundred twenty-five percent (125%) of the average annual wage of the state or an additional Two Thousand Dollars (\$2,000.00) credit for each net new full-time employee who is paid a salary, excluding benefits which are not subject to Mississippi income taxation, of at least two hundred percent (200%) of the average annual wage of the state, shall be allowed for any company establishing or transferring its national or regional headquarters from within or outside the State of Mississippi. A minimum of twenty (20) jobs must be created to qualify for the additional credit. Department of Revenue shall establish criteria and prescribe procedures to determine if a company qualifies as a national or regional headquarters for purposes of receiving the credit awarded in this paragraph (a). As used in this paragraph (a), the average annual wage of the state is the most recently published average annual wage as determined by the Mississippi Department of Employment Security.
- (b) In addition to the other credits authorized in this section, an additional Five Hundred Dollars (\$500.00) credit for each net new full-time employee or an additional One Thousand

Dollars (\$1,000.00) credit for each net new full-time employee who is paid a salary, excluding benefits which are not subject to Mississippi income taxation, of at least one hundred twenty-five percent (125%) of the average annual wage of the state or an additional Two Thousand Dollars (\$2,000.00) credit for each net new full-time employee who is paid a salary, excluding benefits which are not subject to Mississippi income taxation, of at least two hundred percent (200%) of the average annual wage of the state, shall be allowed for any company expanding or making additions after January 1, 2013, to its national or regional headquarters within the State of Mississippi. A minimum of twenty (20) new jobs must be created to qualify for the additional credit. The Department of Revenue shall establish criteria and prescribe procedures to determine if a company qualifies as a national or regional headquarters for purposes of receiving the credit awarded in this paragraph (b). As used in this paragraph (b), the average annual wage of the state is the most recently published average annual wage as determined by the Mississippi Department of Employment Security.

(6) In addition to the other credits authorized in this section, any job requiring research and development skills (chemist, engineer, etc.) shall qualify for an additional One Thousand Dollars (\$1,000.00) credit for each net new full-time employee.

- In addition to the other credits authorized in this (7)section, any company that transfers or relocates its national or regional headquarters to the State of Mississippi from outside the State of Mississippi may receive a tax credit in an amount equal to the actual relocation costs paid by the company. A minimum of twenty (20) jobs must be created in order to qualify for the additional credit authorized under this subsection. Relocation costs for which a credit may be awarded shall be determined by the Department of Revenue and shall include those nondepreciable expenses that are necessary to relocate headquarters employees to the national or regional headquarters, including, but not limited to, costs such as travel expenses for employees and members of their households to and from Mississippi in search of homes and moving expenses to relocate furnishings, household goods and personal property of the employees and members of their households.
- shall be applied for the taxable year in which the relocation costs are paid. The maximum cumulative amount of tax credits that may be claimed by all taxpayers claiming a credit under this subsection in any one (1) state fiscal year shall not exceed One Million Dollars (\$1,000,000.00), exclusive of credits that might be carried forward from previous taxable years. A company may not receive a credit for the relocation of an employee more than one (1) time in a twelve-month period for that employee.

- and prescribe procedures to determine if a company creates the required number of jobs and qualifies as a national or regional headquarters for purposes of receiving the credit awarded in this subsection. A company desiring to claim a credit under this subsection must submit an application for such credit with the Department of Revenue in a manner prescribed by the department.
- (d) In order to participate in the provisions of this section, a company must certify to the Mississippi Department of Revenue that it complies with the equal pay provisions of the federal Equal Pay Act of 1963, the Americans with Disabilities Act of 1990 and the fair pay provisions of the Civil Rights Act of 1964.
- (e) This subsection shall stand repealed on July 1, \*\*\* 2022.
- (8) In lieu of the other tax credits provided in this section, any commercial or industrial property owner which remediates contaminated property in accordance with Sections 49-35-1 through 49-35-25, is allowed a job tax credit for taxes imposed by Section 27-7-5 equal to the percentage of payroll provided in subsection (2), (3) or (4) of this section for net new full-time employee jobs for five (5) years beginning with years two (2) through six (6) after the creation of the jobs. The number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to

Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. This subsection shall be administered in the same manner as subsections (2), (3) and (4), except the landowner shall not be required to increase employment by the levels provided in subsections (2), (3) and (4) to be eligible for the tax credit.

- (9) (a) Tax credits for five (5) years for the taxes imposed by Section 27-7-5 shall be awarded for increases in the annual payroll for net new full-time jobs created by business enterprises qualified under this section. The Department of Revenue shall adjust the credit allowed in the event of payroll fluctuations during the additional five (5) years of credit.
- (b) Tax credits for five (5) years for the taxes imposed by Section 27-7-5 shall be awarded for additional net new full-time jobs created by business enterprises qualified under subsections (5) and (6) of this section and for additional relocation costs paid by companies qualified under subsection (7) of this section. The Department of Revenue shall adjust the credit allowed in the event of employment fluctuations during the additional five (5) years of credit.
- (10) (a) The sale, merger, acquisition, reorganization, bankruptcy or relocation from one (1) county to another county within the state of any business enterprise may not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of

the business enterprise. The Department of Revenue shall determine whether or not qualifying net increases or decreases have occurred or proper transfers of credit have been made and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

- (b) This subsection shall not apply in cases in which a business enterprise has ceased operation, laid off all its employees and is subsequently acquired by another unrelated business entity that continues operation of the enterprise in the same or a similar type of business. In such a case the succeeding business entity shall be eligible for the credit authorized by this section unless the cessation of operation of the business enterprise was for the purpose of obtaining new eligibility for the credit.
- in any taxable year may be carried forward for five (5) years from the close of the tax year in which the qualified jobs were established and/or headquarters relocation costs paid, as applicable, but the credit established by this section taken in any one (1) tax year must be limited to an amount not greater than fifty percent (50%) of the taxpayer's state income tax liability which is attributable to income derived from operations in the state for that year. If the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the business

enterprise is unable to use the existing carryforward, the Commissioner of Revenue may extend the period that the credit may be carried forward for a period of time not to exceed two (2) years.

- (12) No business enterprise for the transportation, handling, storage, processing or disposal of hazardous waste is eligible to receive the tax credits provided in this section.
- (13) The credits allowed under this section shall not be used by any business enterprise or corporation other than the business enterprise actually qualifying for the credits.
  - (14) As used in this section:
- (a) "Business enterprises" means entities primarily engaged in:
- (i) Manufacturing, processing, warehousing,warehousing activities, distribution, wholesaling and research and development, or
- (ii) Permanent business enterprises designated by rule and regulation of the Mississippi Development Authority as air transportation and maintenance facilities, final destination or resort hotels having a minimum of one hundred fifty (150) guest rooms, recreational facilities that impact tourism, movie industry studios, telecommunications enterprises, data or information processing enterprises or computer software development enterprises or any technology intensive facility or enterprise.

- engaged in the creation, display, management, storage, processing, transmission or distribution for compensation of images, text, voice, video or data by wire or by wireless means, or entities engaged in the construction, design, development, manufacture, maintenance or distribution for compensation of devices, products, software or structures used in the above activities. Companies organized to do business as commercial broadcast radio stations, television stations or news organizations primarily serving in-state markets shall not be included within the definition of the term "telecommunications enterprises."
- establish or expand facilities that service and support multiple retail or wholesale locations within and outside the state.

  Warehousing activities may be performed solely to support the primary activities of the entity, and credits generated shall offset the income of the entity based on an apportioned ratio of payroll for warehouse employees of the entity to total Mississippi payroll of the entity that includes the payroll of retail employees of the entity.
- (15) The tax credits provided for in this section shall be in addition to any tax credits described in Sections 57-51-13(b), 57-53-1(1)(a) and 57-54-9(b) and granted pursuant to official action by the Mississippi Development Authority prior to July 1, 1989, to any business enterprise determined prior to July 1, 1989,

by the Mississippi Development Authority to be a qualified business as defined in Section 57-51-5(f) or Section 57-54-5(d) or a qualified company as described in Section 57-53-1, as the case may be; however, from and after July 1, 1989, tax credits shall be allowed only under either this section or Sections 57-51-13(b), 57-53-1(1)(a) and Section 57-54-9(b) for each net new full-time employee.

(16) A business enterprise that chooses to receive job training assistance pursuant to Section 57-1-451 shall not be eligible for the tax credits provided for in this section.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2019.

PASSED BY THE HOUSE OF REPRESENTATIVES

February 4, 2019

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE

March 6, 201

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

2:13pm